

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1095

To be argued by
JONATHAN J. SILBERMANN

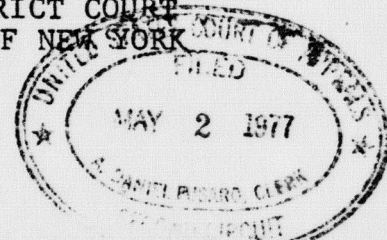
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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:
:
UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
RICHARD TRICA, :
:
Defendant-Appellant. :
-----x

B
Pof S
Docket No. 77-1095

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
RICHARD TRICA
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

EAL

AL DOCKET - U.S. District Court

76 CR 458

NEAHER, J.

JUDGE/MAGISTRATE Assigned U.S.

0719

Disp./Sentence

RICHARD TRICA

LAST, FIRST, MIDDLE

Case Filed
Mo. Day
7 19

76 458

207 1
District Office

FELONY Fel X

U.S. TITLE SECTION

OFFENSES CHARGED

18:2113(a) & 2

Bank robbery and soncpracy
to do/so.

18:371

U.S. MAG
CASE NO 76 M 1403

BAIL - RELEASE

☐ Arrt ☐ Fugitive
☐ Denied ☐ Set ☐ Pers. Recog
☐ PSA

\$50,000

☐ Date ☐ 10% Deposit
☒ Surety Bond
☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd Ptry Cust ☐ Other

II. KEY DATES & INTERVALS

SUPERSEDING
COUNTS

ARREST or

INDICTMENT X

ARRAIGNMENT

TRIAL

SENTENCE

U.S. Custody Began

High Risk Date

Information ☐

7/23/76

Trial Set For

Voir Dire ☐

Disposition of Charges

Summons Served

Indict. Waived ☐

1st Plea

☒ NG ☐ G ☐ NOL

Trial Began ☐

☐ Convicted

☐ On All Charges

First Appearance

In Charging District

Superseding

Final Plea

☐ G Plea ☐ W/Drawn

Trial Ended ☐

☐ Acquitted

☐ On Lesser * Offense(s)

7-9-76

11-8-76

☒ NG ☐ G ☐ NOL

☐ Dismissed

☐ WOP: ☐ WP

☐ On Govern'ts Motion

		DATE	INITIAL/NO	MAGISTRATE		INITIAL/NO	OUTCOME
Search Warrant	Issued			INITIAL APPEARANCE DATE			☐ DISMISSED ☒ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled 7-19-76 Date Held		
Summons	Issued						
	Served						
Arrest Warrant Issued		7-8-76	ASC/070B	☐ WAIVED ☐ NOT WAIVED	Tape Number		
COMPLAINT		7-8-76	ASC/070B	☒ INTERVENING INDICTMENT			
OFFENSE (In Complaint)		Bank Robbery. T-18 USC Sections 2113(a) and 2113(d)					

U.S. Attorney or Asst

ATTORNEYS

Defense ☒ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

~~E. Weinbach~~
E. Weinbach

* Barry Agulnick, Esq.
32 Court Street
Brooklyn, NY 624-6650.

Daniel Murphy III
200 East 42 St. NYC. 10017
986-6272

* Show last names and suffix numbers of other defendants on same indictment/information.

PASQUALE TRICA 2; JOHN GERALD TRAINA 3

DATE (DOCUMENT NO.) PROCEEDINGS

EXCLUDABLE DELAY
(a) (b) (c) (d)

7-19-76 Defendant Indicted See 76 CR 458
7/23/76 Before CHREIN, J. - Case called. Deft & Counsel present. Deft after being advised of his rights & on his own behalf enters a plea of not guilty. All motions & setting of trial date returnable by 8/30/76 at 10:00 a.m. before NEAHER, J.
7/26/76 Notice of Readiness for trial filed.
8-30-76 Before Neaher, J - case called - deft & atty present Mark Landsman - deft moves for reduction of bail - motion granted - bail reduced to PRB -10% cash on condition that family member co-signs bond. Special condition of bail reduction: Deft to report to Pre Trial Services once a week. Case adjd to 9-28-76 for trial and to 9-24-76 for status report(This entry re bail refers to deft PASQUALE TRICA)
9-24-76 Before Neaher, J- case called - deft & counsel present - adjd without date for trial =
9-24-76 By Neaher, J- Order filed substituting counsel Daniel Murphy III as counsel for deft in place of Barry Agulnick

DATE	PROCEEDINGS (continued)	PAGE	V EXCLUDABLE DELAY			
			Interim Setback (a)	Start Date and Date (b)	LT Code (c)	Total Days (d)
9-27-76	Before Neaher, J - case called - deft & counsel Daniel Murphy III present - deft informs the court that he is satisfied with his first court appointed counsel - Barry Agulnich, Esq., and wishes to be represented by no one else.					
9-29-76	Before Neaher, J - case called - deft present - counsel Barry Agulnick not present - adjd without date - time period between this date and date when atty Agulnick is available for trial is to be excludable delay against the deft.					
10/5/76	Voucher for compensation for appointment of counsel filed. (This counsel - Murphy, substituted for counsel Barry Agulnick, and is filing this CJA for payment of the work he did in substitution for Barry Agulnick.).					
10-20-76	Before Neaher, J.- Case Called. Deft Present. Counsel Absent. Case adjd to November 8, 1976 at 10:00 A.M. for Trial and to October 21, 1976 at 10:00 A.M. for Status Report.			10-20-76	T	
10-21-76	Before NEAHER, J - case called - deft xxx present - counsel not present - adjd to Nov. 8, 1976 for trial.			10-21-76 10-21-76	T	
11-8-76	Before Neaher, J.- Case Called. Deft. & Counsel present. Deft's motion to suppress identification of defts argued and denied. Deft's motion to suppress evidence recovered - denied. Deft. withdraws his previous plea and entered a plea of guilty to count 1 of the indictment. Case adjd. without date for sentence. Deft placed under oath to respond to the court's questions. Court is satisfied; there is a factual basis for the plea and same is accepted. - Bail continued.			11-8-76		
11-9-76	Stenographer's Transcript dated November 8, 1976 filed.					
11-9-76	Voucher for expert services filed.					
1-3-77	Stenographer's Transcript dated November 8, 1976 filed.					
1-5-77	Before Neaher, J.- Case Called. Deft. present with Counsel Deft. moves to withdraw his previously entered plea of GUILTY - Motion denied. Case adjd. to 1-7-77 at 9:45 A.M. for sentence.					
1-7-77	Before Neaher, J. Case Called. Deft. & Counsel present. Deft. on his plea of GUILTY to count one (1) is sentenced: ten (10) years imprisonment pursuant to T-18, U.S.C., Section 4205(b)(2). On motion of AUSA - M. Gainey, count two (2) is dismissed.					
1-7-77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.					
1-11-77	Judgment & commitment ret'd and filed - deft was remanded to MCC on 7-9-76, bail \$50,000 syrety and was never released.					

FILE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

76CR 458

TRICA, RICHARD

76
Yr.

458
Docket No.

1
Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-17-77	(Document No.) Notice of Appeal filed.				
1-17-77	Certified Copy of Docket entries and Duplicate copy of Notice of Appeal mailed to the Court of Appeals.				
3.14.77	ORDER filed received from the Court of Appeals that the record be filed on or before 3.31.77, in default of which the appeal shall be dismissed forthwith.				
3/28/77	Record on appeal certified and hand delivered to the C of A by Joan Gill/				

A TRUE COPY
ATTEST
DATED 3/28/77
LEWIS ORGEL
CLERK
BY [Signature]
DEPUTY CLERK

C

TRP:EW:mb
F#761,958
761,959

NEAHER, I.

B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

RICHARD TRICA,
PASQUALE TRICA and
JOHN GERALD TRAINA,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

JUL 19 1976

TIME A.M.....
P.M.....

I N D I C T M E N T

Cr. No. _____
(T.18, U.S.C., §§2113(a)
and 2)

----- X

76 CR 458

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 16th day of June 1976, within the Eastern District of New York, the defendants RICHARD TRICA, PASQUALE TRICA and JOHN GERALD TRAINA knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Hamilton Federal Savings and

Loan Association, 179 Avenue U, Brooklyn, New York, approximately Two Thousand Two Hundred and Seventy Five Dollars and Seventy-Cents (\$2,275.70), in United States currency, which money was in the care, custody, control, management and possession of the said Hamilton Federal Savings and Loan Association, the deposits of which savings and loan association were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2).

COUNT TWO

On or about the 16th day of June 1976, within the Eastern District of New York, the defendants RICHARD TRICA, PASQUALE TRICA, and JOHN GERALD TRAINA did knowingly and unlawfully conspire to commit an offense against the United States by knowingly and unlawfully conspiring to take by force, violence, and intimidation from the person and presence of employees of the Hamilton Federal Savings and Loan Association, 179 Avenue U, Brooklyn, New York, money which was in the care, custody, control, management and possession of the said savings

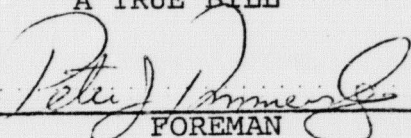
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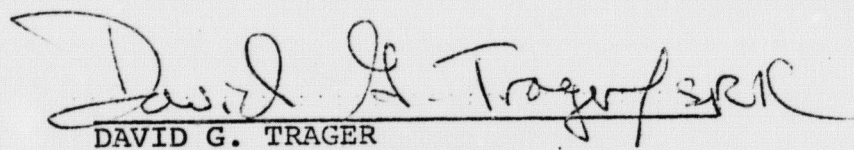
and loan association, the deposits of which savings and loan association were then and there insured by the Federal Savings and Loan Insurance Corporation, in violation of Title 18, United States Code, Section 2113(a). (Title 18, United States Code, Section 371).

O V E R T A C T

1. On or about the 16th day of June 1976, within the Eastern District of New York, RICHARD TRICA entered the Hamilton Federal Savings Loan Association, 179 Avenue U, Brooklyn, New York.

A TRUE BILL


FOREMAN


DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

15 At this point I'd ask the court's indulgence
16 for a five-minute recess so that we may have a
17 discussion.

18 THE COURT: All right. We will recess for
19 five minutes. C

20 (Recess taken.)

21 MR. ACULNICK: If your Honor pleases, at
22 this point in the suppression hearing, I have an
23 application to suspend the hearing.

24 I've had an opportunity to have a conference with
25 my client and as a result of that conference he's asked

ma to ask the court for permission to withdraw his plea of not guilty and to plead guilty to the first count in the indictment.

With that thought in mind, I'd ask that the hearing be suspended at this time.

MISS GAINNEY: Your Honor, I - -

THE COURT: Yes?

MISS GAINNEY: Excuse me.

THE COURT: I was going to ask, is the government in accord with the consideration of such a plea?

MISS GAINNEY: We would be, your Honor.

But we have just about completed the suppression hearing, in any event, and I wondered if we could have a ruling with respect to that.

I'm not sure if that is the practice here or not. Before the plea is taken?

THE COURT: Well, on the evidence so far, I would say that I do not believe the defense has carried the burden of showing that there was any unlawful seizure of articles, which it would appear were in plain view, and since obviously the execution of the arrest warrant brought them lawfully within the room where they expected to make the arrest, but for the defendant's action in going out the back door, their presence on the premises

1 was lawful and, as I say, the articles that were seized
2 on the evidence would appear, at least those that we were
3 discussing here, would appear to have been in plain view.
4

5 So I would rule that those articles would have
6 been admissible as evidence in the trial of the case.

7 MISS GAINNEY: And, your Honor, the government would
8 have no objection to the defense application.

9 THE COURT: All right. Counsel then may approach
10 the bench.

11 MR. AGULNICK: Yes, your Honor.

12 THE COURT: This application, as I understand it,
13 is directed to Count One?

14 MR. AGULNICK: Yes.

15 If your Honor pleases, I've had a discussion with
16 my client and he's had an opportunity to speak with his
17 brother, who is also his co-defendant at this time, and
18 after that discussion, based upon the hearings that we've
19 had today and a full discussion of the case, Richard
20 Trica has authorized me to ask the court for permission
21 to withdraw his previously entered plea of not guilty
22 and he offers to plead guilty to Count One in this indict-
23 ment 76-CR-458 now pending against him.

24 I've also had a discussion with Miss Gainney of
25 the United States Attorney's office, who has informed me

1 that this particular plea will cover two other crimes of
2 a similar nature, which are now under investigation by the
3 FBI and Miss Gainey's office, and I've also been informed
4 that even though it's not a condition of the plea, that
5 Miss Gainey will dismiss the charges as against the
6 defendant's brother after the taking of this particular
7 plea. The defendant is concerned about that aspect of
8 the matter. Therefore, I place it on the record.
9

10 THE COURT: All right. Before the court may con-
11 sider the application, it will be necessary for me to ask
12 your client certain questions and inform him as to certain
13 rights which he would have.

14 First of all, how old are you, Mr. Trica?
15 What is your age?

16 THE DEFENDANT RICHARD TRICA: Thirty-four.

17 THE COURT: What has been the extent of your
18 schooling? High school?

19 THE DEFENDANT RICHARD TRICA: No.

20 THE COURT: No. Less than high school?

21 THE DEFENDANT RICHARD TRICA: Grammar school.

22 THE COURT: Grammar school. Eighth grade, ninth
23 grade?

24 THE DEFENDANT RICHARD TRICA: Seventh.

25 THE COURT: Seventh grade. All right.

1 THE DEFENDANT RICHARD TRICA: Hold it a minute.

2 MR. AGULNICK: Your Honor, the defendant again is - -
3 he wants to know - - he's very anxious to know that the
4 matter against his brother will be dismissed after the
5 taking of the plea. Perhaps - -

6 THE COURT: That is something, of course, up to the
7 government.

8 MR. AGULNICK: I don't want to put Miss Gainey in
9 an uncomfortable position, but it is my understanding
10 that it will be dismissed after the taking of the plea.

11 MISS GAINNEY: That's the government's intention,
12 but I want it to be perfectly clear that this defendant's
13 plea is in no way conditioned upon what the government
14 will do with respect to his co-defendant's case.

15 MR. AGULNICK: Well, but the point is, it's your
16 intention to dismiss it after the taking of the plea?

17 MISS GAINNEY: As I have stated.

18 MR. AGULNICK: Even though it is not a condition.

19 MISS GAINNEY: If that is a condition, I'm hoping
20 this is a free and voluntary plea, based on the defendant's
21 admission of guilt and in no way conditioned upon any
22 factors of whether or not the government intends to go
23 forward with his brother's case.

24 THE COURT: Yes. Well, let me say - -
25

1
2 MR. AGULNICK: It's just an awareness that the
3 defendant has for his brother's situation. It has nothing
4 to do with the voluntariness of his offering this plea at
5 this time, your Honor.

6 THE COURT: We will have to determine that on the
7 basis of the answers he gives to certain questions.

8 MR. AGULNICK: All right.

9 THE COURT: Now, at the present time, Mr. Trica, or
10 in the recent past, have you been subject to any problems
11 with narcotics?

12 THE DEFENDANT RICHARD TRICA: Yes.

13 THE COURT: How recently?

14 THE DEFENDANT RICHARD TRICA: How recent?

15 THE COURT: How recently?

16 THE DEFENDANT RICHARD TRICA: Since - - what do you
17 mean by "recent"?

18 THE COURT: When did you last use narcotics? Let
19 me put it that way.

20 THE DEFENDANT RICHARD TRICA: Just before I was
21 arrested.

22 THE COURT: Just before you were arrested, which is
23 on July the 9th of this year?

24 THE DEFENDANT RICHARD TRICA: Yes.

25 THE COURT: All right. Since that time, I take it

1 not necessarily of your own free will, you have not been
2 using narcotics, except to the extent that they may have
3 been administered during your stay in federal custody?

4 THE DEFENDANT RICHARD TRICA: Yes.

5 THE COURT: You were given methadon for a time?

6 THE DEFENDANT RICHARD TRICA: Yes.

7 THE COURT: And detoxified, as they put it, in
8 that fashion; is that right?

9 THE DEFENDANT RICHARD TRICA: Yes.

10 THE COURT: Now, either this morning or yesterday,
11 was anything administered to you by either - - you know,
12 either methadon, or anything of that nature, that makes
13 it difficult for you to understand clearly what I am
14 saying to you here?

15 THE DEFENDANT RICHARD TRICA: No.

16 THE COURT: Now, are you, aside from narcotics,
17 have you recently been under the care of any doctor for
18 any kind of condition, physical or mental?

19 THE DEFENDANT RICHARD TRICA: Yes.

20 THE COURT: Yes?

21 THE DEFENDANT RICHARD TRICA: No.

22 THE COURT: Yes?

23 THE DEFENDANT RICHARD TRICA: No.

24 THE COURT: The answer is "No"?

25

1 THE DEFENDANT RICHARD TRICA: No.

2
3 THE COURT: All right. As I indicated a while ago,
4 before this court accepts a plea of guilty, a judge has
5 the obligation to inform the defendant what that plea
6 means, what he is giving up, what the consequences may
7 be. Do you understand that?

8 THE DEFENDANT RICHARD TRICA: Yes.

9 THE COURT: Now I want to make sure you understand
10 that when you plead guilty, there will be no trial.
11 There will be no appeal from anything that happens.
12 You understand?

13 THE DEFENDANT RICHARD TRICA: Yes.

14 THE COURT: You will be required to tell the court
15 yourself what it was you did and if in making those
16 statements about the offense you incriminate yourself,
17 do you understand, you lose the protection of the right
18 against self-incrimination, which you would otherwise
19 have had, if you went to trial. Do you understand that?

20 THE DEFENDANT RICHARD TRICA: Yes.

21 THE COURT: Finally in that connection, if you do
22 not answer my questions truthfully, you face the possi-
23 bility that you might be separately prosecuted for
24 perjury. Do you understand that?

25 THE DEFENDANT RICHARD TRICA: Yes.

1 THE COURT: Also you will have to reveal certain
2 things about the commission of the crime which I will
3 ask you about, should we get that far.

4 Now, first off, as I understand it, you are
5 offering to plead guilty to Count One of Indictment
6 76 Criminal 458, which charges you and two others named
7 therein, one of them being your brother Pasquale, with
8 knowingly and willfully, by force, violence and intima-
9 tion, taking from the persons and prasence of employees
10 of the Hamilton Federal Savings & Loan Association, 179
11 Avenue U, Brooklyn, New York, approximately \$2,275 in
12 United States currency, which money was in the care,
13 custody, control, managment and possession of the said
14 Hamilton Federal Savings & Loan Association, the deposits
15 of which Savings & Loan Association were then and there
16 insured by the Federal Savings & Loan Insurance Corpora-
17 tion.

18 In short, what it says is you robbed a bank.

19 THE DEFENDANT RICHARD TRICA: Ma.

20 THE COURT: You did?

21 THE DEFENDANT RICHARD TRICA: Yes.

22 THE COURT: Right.

23 THE DEFENDANT RICHARD TRICA: Ma, that's it.

24 THE COURT: All right. Now, do you understand
25 that your plea of guilty, if accepted by the court,

1 would have the same effect as if you had been tried in
2 this court at a trial before a jury and been found
3 guilty? Do you understand that?

4 The plea of guilty operates the same way in that
5 if it is accepted by the court, you face whatever punish-
6 ment the court may impose pursuant to the law which
7 provides for a penalty for such an offense. Do you
8 understand that?

9 THE DEFENDANT TRICA: Yes.

10 THE COURT: In this case, do you understand that
11 the maximum penalty here could be up to twenty years
12 imprisonment and up to a \$5,000 fine or both? Do you
13 understand that?

14 THE DEFENDANT RICHARD TRICA: Yes.

15 THE COURT: I want this on the record.

16 THE DEFENDANT RICHARD TRICA: Yes.

17 THE COURT: All right. Now, I want to be sure you
18 understand that you are under no obligation to plead
19 guilty to any charge made here by the government against
20 you. Do you understand that, that you are under no
21 obligation?

22 THE DEFENDANT RICHARD TRICA: Yes.

23 THE COURT: That you are entitled to certain
24 rights, as a matter of law, and you may avail yourself
25 of those rights, if you so choose.

1 If you give them up, voluntarily, and the court
2 finds that you do, then you must understand, as I said,
3 there will be no further trial, there will be no appeal
4 and that will be the end of the matter, except for the
5 imposition of sentence. Do you understand that?

6 THE DEFENDANT RICHARD TRICA: Yes.

7 THE COURT: Now, do you understand that if you
8 went to trial, you would have these rights: You would
9 have the right to remain silent, not take the stand or
10 offer any defense, but require the government to prove,
11 beyond a reasonable doubt, to the satisfaction of a jury,
12 that you did the things the government says you did? Do
13 you understand that?

14 THE DEFENDANT RICHARD TRICA: Yes.

15 THE COURT: And the jury will be told that they
16 would have to presume you to be innocent of those charges
17 and they could not draw any unfavorable inference
18 against you because you did not take the stand or offer
19 any defense? Do you understand that?

20 THE DEFENDANT RICHARD TRICA: Yes.

21 THE COURT: Secondly, you would have the right
22 through your attorney to confront the witnesses against
23 you, who appear on the stand, and your attorney in his
24 cross-examination of those witnesses might bring out
25 something which would cause the jury to believe there

1 was a reasonable doubt as to your guilt. Do you under-
2 stand that?

3 In which event, they would have to acquit you of
4 the charges?

5 THE DEFENDANT RICHARD TRICA: Yes.

6 THE COURT: You do understand?

7 THE DEFENDANT RICHARD TRICA: Yes.

8 THE COURT: Finally, if there were any witnesses
9 who could be brought to court here to help you in your
10 defense, and who would not come willingly, you could ask
11 the court to have them brought here under the court's
12 power. Do you understand that?

13 THE DEFENDANT RICHARD TRICA: Yes.

14 THE COURT: Now, at the outset here, your attorney
15 related certain promises that he understood the govern-
16 ment was making to you, which was one of the reasons, or
17 perhaps the reason, why you're offering to plead guilty.
18 You remember that?

19 THE DEFENDANT RICHARD TRICA: Yes.

20 THE COURT: I want to be sure now again exactly
21 what those promises are so that they may be clear on the
22 record.

23 As I understand it, there is an additional count
24 in this indictment before the court, Count Two, a charge,
25 I believe, of conspiracy, which the government would

1 dismiss at the time of sentence?

2 MISS GAINNEY: That is correct.

3 THE COURT: That there are presently pending other
4 investigations or prospective prosecutions?

5 MISS GAINNEY: Yes.

6 THE COURT: With respect to - -

7 MISS GAINNEY: Specifically with respect to the
8 robbery at the Bay Ridge Federal Savings & Loan Associa-
9 tion at Avenue U in Brooklyn on June 21, 1976, and a
10 robbery at the Citibank at Avenue X in Brooklyn, New
11 York, on June 30, 1976.

12 THE COURT: And the government proposes not to go
13 further with those prosecutions as against the defendant;
14 is that correct?

15 MISS GAINNEY: Yes, as against this defendant
16 Richard Trica.

17 THE COURT: They would be dropped.

18 Now, what else was there?

19 MISS GAINNEY: That is it.

20 THE COURT: That is it.

21 MR. AGULNICK: Yes, your Honor, that - - those
22 are the only conditions upon which this plea is taken,
23 but again, I think, as a matter of mechanics after the
24 plea is taken, the United States Attorney will dismiss
25 the charges against the defendant's brother.

1 THE COURT: All right. But I think it has to be perfectly
2 clear to this defendant that if for any reason that
3 should not happen, the defendant's plea is being accepted
4 on the basis that that does not enter into this so-called
5 plea agreement. Is that understood by the defendant?
6 It is? Will you please answer yes for the record?

7 THE DEFENDANT RICHARD TRICA: No, it's not.

8 THE DEFENDANT PASQUALE TRICA: Yes, it is.

9 THE DEFENDANT RICHARD TRICA: Yes, it is.

10 THE COURT: I do not wish to get into a familial
11 dispute here.

12 MR. AGULNICK: This is - - the problem that we
13 have here, your Honor, is the defendant is very much con-
14 cerned for his brother.

15 THE COURT: I could understand that.

16 MR. AGULNICK: He's apprehensive in regard to his
17 brother's well-being. That's the reason.

18 THE DEFENDANT RICHARD TRICA: Yes.

19 THE COURT: But the government says it does not go
20 that far to guarantee that that will happen.

21 Now, if that is a promise or a condition under
22 which the plea is being offered, then I do not see how
23 the court can accept it, unless the condition is fulfilled
24 or withdrawn.

25 MR. AGULNICK: The Judge is saying you have to act

1 on your own for yourself at this time.

2 THE DEFENDANT RICHARD TRICA: Yes, sir.

3 THE COURT: You are prepared to go forward on the
4 basis that it is not a guarantee?

5 THE DEFENDANT RICHARD TRICA: Yes, sir.

6 THE COURT: And that as far as you are concerned,
7 you are pleading on the basis of your own decision as
8 regards yourself personally and your action is influenced
9 by what the government has said about the dropping of the
10 second count in this indictment and the dropping of other
11 prosecutions against you for two other specific bank
12 robberies that were mentioned; is that correct?

13 THE DEFENDANT RICHARD TRICA: Yes, sir.

14 THE COURT: All right. Aside from that, no
15 promises, am I correct in saying that no promises have
16 been made that any particular sentence will be imposed
17 by the court as a result of your pleading guilty here;
18 is that right?

19 THE DEFENDANT RICHARD TRICA: Yes, sir.

20 THE COURT: There is no understanding of that
21 kind, and what you are doing, you are doing voluntarily
22 and you are not being pushed into this by anyone, your
23 own free will, and you understand everything I am saying
24 to you and are agreeing that that is so?

25 THE DEFENDANT RICHARD TRICA: Yes.

1 THE COURT: All right. Now we come to the question
2 of what you did on or about June 16, 1976 which gave rise
3 to this charge that you robbed the Hamilton Federal
4 Savings & Loan Association.

5 Now, does the government desire that the defendant
6 be placed under oath for this purpose?

7 MISS GAINNEY: Yes, your Honor.

8 THE COURT: All right. Will the clerk swear the
9 defendant?

10 THE CLERK: Raise your right hand, please.

11 MR. AGULNICK: Raise your right hand.

12 (The defendant Richard Trica is sworn by the
13 Clark of the Court.)

14 THE COURT: All right. Now, as I say, this indict-
15 ment in Count One of which you are offering to plead
16 guilty says that on or about June 16, 1976, someone, you
17 and - - you or someone else, went into the Hamilton
18 Federal Savings & Loan Association and took approximately
19 \$2,275 from employees there. Now you tell me what you
20 did.

21 THE DEFENDANT RICHARD TRICA: I needed drugs,
22 your Honor. I ran into the bank. I demanded money and
23 I got it.

24 THE COURT: You demanded money and you got it?

25 THE DEFENDANT RICHARD TRICA: Yes.

1 THE COURT: And you went in there alone?

2 THE DEFENDANT RICHARD TRICA: Yes, sir.

3 THE COURT: At the time did you know what you were
4 doing?

5 THE DEFENDANT RICHARD TRICA: I knew I needed drugs,
6 your Honor.

7 THE COURT: Well - -

8 THE DEFENDANT RICHARD TRICA: I knew I needed money
9 for drugs.

10 THE COURT: Well, I can understand that. You know
11 what I am trying to say?

12 THE DEFENDANT RICHARD TRICA: Yes, I know - - yes.

13 THE COURT: Even though you needed drugs, you knew
14 you were outside a bank and you knew you were going to go
15 into that bank and you knew you did go into that bank?

16 I do not want to put words in your mouth.

17 THE DEFENDANT RICHARD TRICA: Yes, I know what you
18 mean. Yes, sir.

19 THE COURT: And you made a demand on the teller
20 there?

21 THE DEFENDANT RICHARD TRICA: Yes.

22 THE COURT: Do you remember how you did it?

23 THE DEFENDANT RICHARD TRICA: I demanded money and
24 I got it.

25 THE COURT: I mean, was there - - did you have

1 something with you? I do not mean a gun necessarily,
2 but I mean - -

3 THE DEFENDANT RICHARD TRICA: A bag.

4 THE COURT: You put up a bag or something?

5 THE DEFENDANT RICHARD TRICA: I gave her a bag and
6 I asked her to put money in.

7 THE COURT: You had brought that bag with you?

8 THE DEFENDANT RICHARD TRICA: Yes. I found it.

9 THE COURT: You found it somewhere on the way?

10 THE DEFENDANT RICHARD TRICA: Yes.

11 THE COURT: She did and then you went to the next
12 teller?

13 THE DEFENDANT RICHARD TRICA: Yes. He was right
14 there.

15 THE COURT: And he put some more money in?

16 THE DEFENDANT RICHARD TRICA: Yes.

17 THE COURT: And then you want out?

18 THE DEFENDANT RICHARD TRICA: Right.

19 THE COURT: Now, at the time you went in there, you
20 had some sun glasses with you or - -

21 THE DEFENDANT RICHARD TRICA: Yes. I had sun
22 glasses and a hat.

23 THE COURT: And a hat?

24 THE DEFENDANT RICHARD TRICA: Yes, sir.

25 THE COURT: Pulled down over your face?

1 THE DEFENDANT RICHARD TRICA: Yes.

2 THE COURT: In other words, you did want to try
3 to conceal your identity?

4 THE DEFENDANT RICHARD TRICA: It was a hot day.
5 I had it on.

6 THE COURT: Oh, yes, but I mean, you had the hat
7 on, though, so they could not see too well and the sun
8 glasses so they could not see too well; is that correct?

9 THE DEFENDANT RICHARD TRICA: Yes.

10 THE COURT: And you knew what you were doing?
11 That is to say, as the indictment says, you did what you
12 were doing knowingly and willfully?

13 THE DEFENDANT RICHARD TRICA: Yes.

14 THE COURT: And there was no mistake about that?

15 THE DEFENDANT RICHARD TRICA: No.

16 THE COURT: You were not acting because you thought
17 it was a grocery store and you were going in to buy a
18 pound of something? There was no mistake about that?

19 THE DEFENDANT RICHARD TRICA: No.

20 THE COURT: You knew it was a bank and you knew
21 you wanted to get the money?

22 THE DEFENDANT RICHARD TRICA: Yes.

23 THE COURT: Even though you were being driven by
24 this drug impulse?

25 THE DEFENDANT RICHARD TRICA: Yes.

1 THE COURT: All right. Now, Mr. Agulnick, are
2 there any other questions you believe I should ask the
3 defendant at this time regarding the voluntariness of
4 his plea, his understanding of the consequences and so
5 forth?

6 MR. AGULNICK: No, your Honor.

7 THE COURT: Is there any reason you know of why he
8 should not plead guilty to Count One of this indictment?

9 MR. AGULNICK: No, your Honor.

10 THE COURT: Does the government have any additional
11 question in mind that I should put to the defendant at
12 this time?

13 MISS GAINES: No, your Honor.

14 THE COURT: Now, having heard what I have said,
15 Mr. Trica, about what your rights are and what the con-
16 sequences could be by way of punishment, should your
17 plea be accepted by the court, is it still your wish to
18 plead guilty to Count One?

19 THE DEFENDANT RICHARD TRICA: Yes.

20 THE COURT: All right. The court finds that the
21 defendant Richard Trica understands the nature of the
22 charge against him in Count One of Indictment 76 Criminal
23 458, that he understands the consequences by way of
24 punishment as provided by law, which may be imposed upon
25 him if his plea should be accepted by the court, that he

1 understands the rights that he would have under law to
2 have the question of his guilt or innocence decided at
3 trial by a jury, and he understands there will be no
4 further trial or right of appeal in this case if his plea
5 is accepted, that he appears to be acting voluntarily,
6 that the court has been made fully aware of all promises
7 which have entered into the making of this plea, and the
8 court finds that he is fully aware of the rights which he
9 would have and that there is a basis in fact for the plea
10 and the plea is therefore accepted.

11 MR. AGULNICK: Thank you.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

..... x

UNITED STATES OF AMERICA, :
- against - :
RICHARD TRICA, :
Defendant. :
..... x

76-CR-458

D

D

United States Courthouse
Brooklyn, New York

January 5, 1977

B e f o r e :

HONORABLE EDWARD B. NEAHER, U.S.D.J.

PAUL KLIMASZEWSKI
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: MARILYN GAINES, ESQ.
Assistant U. S. Attorney

BARRY AGULNICK, ESQ.
Attorney for Defendant

1
2 THE CLERK: The United States versus
3 Richard Trica.

4 THE COURT: Good morning Ms. Gainey and
5 Mr. Agulnick.

6 MR. AGULNICK: Good morning, your Honor.

7 MS. GAINNEY: Good morning, your Honor.

8 THE COURT: As I understand it, this is on
9 this morning on the defendant's motion to withdraw
10 his guilty plea.

11 MR. AGULNICK: May I be heard very briefly on
12 this?

13 THE COURT: Yes.

14 MR. AGULNICK: As your Honor knows, the plea
15 was taken in this particular matter I believe on
16 November 8th or thereabout, and prior to the taking
17 of the plea I had had extensive discussions with my
18 client. In addition, he had had discussions with
19 his brother, who was a co-defendant at one point in
20 the proceedings, and also, he had a discussion with
21 his brother's attorney, Mr. Landman, who was I believe
22 present in regards to the taking of the plea. After
23 the plea was taken, I received telephone communica-
24 tions asking me to come into the State Court and repre-
25 sent Mr. Trica on the State Court matter.

1
2 At that time in the State Court, I went back to
3 the pen to see Mr. Trica and he indicated that he was
4 having second thoughts about the plea which he had
5 originally taken, and that he wished to withdraw his
6 plea. After that particular time, I received a tele-
7 phone communication from him stating that he had changed
8 his mind, or at least that I should hold up on the mo-
9 tion, and finally I had received other communications
10 from him saying that he wished to withdraw his plea.
11 I went back to see him this morning and he has indi-
12 cated to me that he wants to withdraw his plea in
13 our case here.

14 In view of all that has transpired, I think it
15 would be in the best interest of Mr. Trica, if new
16 counsel would be provided to him in order to represent
17 him on his application to withdraw his plea, since I
18 was involved in the virtual mechanics, and perhaps
19 some act on my part may very well be one of the items
20 that he is using as a basis to withdraw his plea, I
21 don't know, but I don't feel that I can, in good
22 conscience, vigorously go forward on this motion to
23 withdraw the plea that Mr. Trica proposes to make at
24 this time. And, I don't want to see him denied his
25 right to full and effective counsel, because I have my

1
2 own personal feelings about what transpired here, and
3 that's my position.

4 THE COURT: Well, Ms. Gainey?

5 MS. GAINNEY: Your Honor, all I can say at this
6 point is that I have only heard of this and have been
7 informed of this by Mr. Agulnick that the defendant
8 wishes to withdraw his plea. I have not been pre-
9 sented with any reasons why he wishes to do so, I
10 could not even intelligently answer any motion at this
11 time.

12 THE COURT: Are you prepared, Mr. Agulnick,
13 to inform the Court as to any reason why this appli-
14 cation is being withdrawn?

15 MR. AGULNICK: May I have one moment?

16 THE COURT: Sure.

17 MR. AGULNICK: Your Honor, the defendant had
18 previously informed me and again, reiterates to day
19 that at the time he had taken the plea, he was under
20 medication and that that medication prohibited him
21 from thinking clearly and knowingly entering into the
22 plea. The defendant said that he was given certain,
23 what he characterizes as being mood changing drugs, by
24 I would assume, the prison officials at that time.

25 At the present time, he is not under any

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2 medication, or at least not the same type of medication
3 which would cause him to change his moods.

4 THE COURT: Well now, I, being in anticipation
5 of this, obtained a copy of the minutes that really
6 began and the suppression hearing, as you will recall,
7 and in connection with his condition at that time to
8 abandon the suppression hearing, and also a plea of
9 guilty. I, of course, asked him a number of questions
10 and ascertained that he had used narcotics up until at
11 least the time of his arrest which was on July 9, and
12 in this hearing I referred to took place on November 8,
13 1976, some four months after his arrest and I believe
14 he was constantly in custody during that period of
15 time.

16 And, the responses to the Court's questions in-
17 dicated that he had been given methadone for a time and
18 he was detoxified and that he was in the detoxification
19 process. Then I asked him earlier this morning, or
20 yesterday, was anything administered to you by either,
21 you know, either the methadone or anything of that
22 nature that makes it difficult for you to understand
23 clearly what I am saying to you, and his answer was
24 "no." Then I said, "aside from narcotics, have you
25 recently been under the care of any doctor for any

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2 kind of condition, physical or mental," and his answer
3 to that was "yes," and then when he said that, I said
4 "yes," and he said "no."

5 Then I asked him again, "is the answer 'yes,'"
6 and he said "no, the answer is no." Now, at that time
7 his position was that he was not under any medication
8 and it seems to me, from my observation of him, that
9 he appeared to be speaking sensibly and in full pos-
10 session of his faculties.

11 Now, are you telling the Court you were not
12 in full possession of your faculties at that time?

13 MR. TRICA: Yes sir.

14 MS. GAINES: Your Honor, may I suggest if any
15 questions are going to be asked of Mr. Trica, that he
16 be put under oath?

17 MR. AGULNICK: Your Honor, again I have to say
18 that I think that the proper procedure would be to
19 allow new counsel to come in and represent Mr. Trica
20 at this point, since I was actually involved in the
21 very taking of the plea and discussions with Mr. Trica
22 on that date, and I could very well be somewhat more
23 than an attorney and almost a witness as to his condi-
24 tion at that time, and I have my own opinions as to
25 his condition at that time, and you know I've thought

1
2 about it and there is no way I can put aside my own
3 experiences and opinions, opinions of his condition on
4 that date. I have formed my own conclusions and I
5 am doing this in all fairness to Mr. Trica.

6 THE COURT: Well, I understand that but you
7 know, the legal process is not something ---

8 MR. AGULNICK: I'm torn between the two.

9 THE COURT: -- to be played around with.

10 MR. AGULNICK: I understand that, Your Honor.

11 THE COURT: I have observed this defendant on
12 any number of occasions, and in my opinion at all times
13 he knows what he's been doing. I'm satisfied that his
14 plea was voluntarily made and my opinion is the excuse
15 now offered is not worthy of belief, and accordingly,
16 I am going to deny the application.

17 THE WITNESS: May I ask a question, your Honor?

18 THE COURT: Yes, Mr. Trica, you may.

19 THE WITNESS: What does the second count of the
20 indictment, what does it carry?

21 THE COURT: The second count is the conspiracy
22 count, five years.

23 THE WITNESS: Five years? And it does not
24 carry 15?

25 THE COURT: It does not carry 15, you say?

1
2 THE WITNESS: Yes sir.

3 THE COURT: Well, what difference does that
4 make?

5 THE WITNESS: Ten years.

6 THE COURT: Well, I know it makes a difference
7 of 10 years Mr. Trica, but you must understand that
8 in your position, what difference does it make, than
9 the other defendants who went to trial for whatever
10 reason, received a verdict of guilty on the conspiracy
11 count and was acquitted on the other counts, but the
12 evidence indicated a reason why a jury might have felt
13 that way about the other defendants. Your case is
14 different, just as it was different than in the case
15 of your brother, which prompted the Government to dis-
16 miss the case.

17 THE WITNESS: There is something else I would
18 like to go over with my counsel.

19 THE COURT: I am deliberately refraining, and
20 as you know, at the time of the plea I made it very
21 clear to you that whatever action the Government con-
22 templated taking with respect to your brother was not
23 a condition of any plea you made. I wanted it to be
24 made perfectly clear to you that you stood on your
25 own case, and I was satisfied at the time we went over

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2 those situations that you did understand, and am of
3 that same opinion now, and I think it would be contrary
4 to my function as a judge is I were to rule otherwise
5 on your present application.

6 THE WITNESS: Very good.

7 MR. AGULNICK: Do you have anything else to
8 say?

9 THE WITNESS: No, that's it.

10 THE COURT: All right. Now let me ask you
11 this. I believe a date for sentenced has been
12 fixed or will be shortly fixed in this case.

13 MR. AGULNICK: I have no knowledge of a date.

14 MS. GAINES: I do not.

15 THE COURT: Let me say that it would have
16 been fixed by now, but when I was apprised of this
17 application I deliberately refrained from reviewing
18 his presentence report and that's what caused the
19 delay. I did not wished to be prejudiced by any-
20 thing I found there, so I have absolutely no acquaint-
21 ance with anything he may have done in the past, I
22 know only what you know about this case here.

23 MR. AGULNICK: For the purpose of the sentencing,
24 I would again ask to be relieved of this matter because
25 I think there is a definite lack of communication

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2 between myself and Mr. Trica, and perhaps there is a
3 lack of confidence on his part in my ability to repre-
4 sent him.

5 THE COURT: And I suppose Mr. Trica has confi-
6 dence in my ability to appoint someone he desires. The
7 last time you were tied up in trial and it seemed ad-
8 visable to find another attorney for him. He thought
9 I appointed a Government agent to represent him and
10 actually he doesn't realize that I appointed one of the
11 best young attorneys available in this City on an
12 appointment basis who has been successful in getting
13 defendants acquitted. I don't know if I should have
14 extended myself in his case to do that but I did and
15 I was really amazed when he said he thought I appointed
16 a Government agent, just because he was a clean cut
17 young man who might have looked like an FBI agent, but
18 wasn't. Now, if you feel that strongly about it I
19 assume you were appointed to represent him, were you
20 not?

21 MR. AGULNICK: Yes, your Honor.

22 THE COURT: And he is without funds. Was the
23 form filled out at the time?

24 MR. AGULNICK: I believe it must have been, he's
25 definitely without funds.

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2 THE COURT: He's without funds?

3 MR. AGULNICK: Definitely, your Honor. I've
4 taken numerous appointments --

5 THE WITNESS: Your Honor, can I enter this?
6 Can I be sentenced today --

7 THE COURT: Mr. Trica, I know you want to get
8 this over with, I wouldn't blame you for that. Un-
9 fortunately we have a procedure. I don't believe your
10 attorney has had a chance to review the presentence
11 report, and I believe as I say, it is available now.
12 Have you received it?

13 MR. AGULNICK: I have not received any notice.

14 THE COURT: You probably didn't receive the
15 notice because I directed probation to hold it up
16 when I heard of this application. I can't do it
17 today, but we can make it very reasonably prompt; I
18 would say since today is Wednesday, would you be availa-
19 ble Friday? I mean, while you're here I'll tell
20 Probation as I said --

21 MR. AGULNICK: If your Honor is going to keep
22 me on the case, then I will be available for Friday.

23 THE COURT: I really think you're the one most
24 familiar with it and are in the best position to advise
25 him. I don't believe there's anything in your conduct

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2 that deserves criticism and I cannot see at this
3 juncture that a switch of counsel would be in his
4 interest.

5 MR. AGULNICK: Very well, your Honor.

6 THE COURT: Now, as I say, I'll notify Proba-
7 tion that this application has been decided and that
8 they are to make a report available to you to read,
9 and if you want to do it while you are around here
10 today --

11 MR. AGULNICK: Yes, your Honor.

12 THE COURT: Then suppose we set it for Friday.

13 MR. AGULNICK: Fine.

14 MS. GAINNEY: Fine.

15 THE COURT: Will that be all right with you
16 Ms. Gainney?

17 MS. GAINNEY: Yes. I have other matters around
18 the courthouse, but I or someone else will be here on
19 Friday.

20 THE COURT: All right.

21 MS. GAINNEY: Can this be scheduled for 10:00
22 on Friday morning?

23 THE COURT: Do you have anything at 9:30? Well,
24 suppose you be here at 9:45 on Friday.

25 MS. GAINNEY: Yes.

1
2 THE COURT: And as I say, will you call Probation
3 immediately and tell them to make the report
4 available?

5 THE CLERK: Probation is here, already your
6 Honor.

7 THE COURT: Is the report available?

8 THE CLERK: Yes, it is.

9 THE COURT: Fine.

10 All right, Friday morning for sentencing.

11 THE WITNESS: Can I speak to this man for
12 about two minutes?

13 MR. AGULNICK: And I want to go back in with
14 him.

15 THE COURT: All right, of course.

16 MR. AGULNICK: He wants to speak to me and
17 perhaps he wants the case to be called again.

18 THE COURT: All right. We'll mark it for a
19 second call.

20 (Short recess was held.)

21 MR. AGULNICK: Your Honor, no reason for a
22 second call on this. Thank you very much.

23 THE COURT: That's all right.

24 (Proceeding concluded for the day.)

25 * * *

CERTIFICATE OF SERVICE

May 2, 1977

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Jonathan Hilberman